

## Appendix 5/1 Standard Terms and Conditions for Procurement

### 1. Definitions

"Buyer" means Constructex Ltd, or its' wholly owned subsidiaries.

"Seller" means the person, firm or company to whom the Purchase Order is addressed and any employees, sub-contractors or agents of said person, firm or company.

"Goods" means the materials, articles, works and services described in the Contract.

"Package" means any type of package including bags, boxes, cases, cylinders, drums, pallets, tank wagons and other containers.

"Authorised Officer" means the Buyer's authorized employee, either generally or specifically allocated, by the Buyer to sign the Buyer's Purchase Order, confirmation of which may be obtained from the Regional Manager.

"Authorised" means signed by one of the Buyer's Authorised employee's.

"Purchase Order" means the Buyer's Authorised Purchase Order having these General Conditions of Purchase on its reverse or attached to it or referring to these General Conditions of Purchase on its face.

"Order Amendment" means the Buyer's Authorised Order Amendment or series of Order Amendments, each Order Amendment having precedence over any earlier Order Amendment.

"Contract" has the meaning given in Condition 2 below.

"Price" has the meaning given in Condition 3 below.

"Sale of Goods Act 1979" shall mean the Sale of Goods Act 1979 as amended by the Sale and Supply of Goods Act 1994.

"Supply of Goods and Services Act 1982" shall mean the Supply of Goods and Services Act 1982 as amended by the Sale and Supply of Goods Act 1994.

**2. The Contract:** The Seller agrees to sell and the Buyer agrees to purchase the Goods in accordance with the Contract. The Contract shall comprise (in order of precedence): any Order Amendments, the Purchase Order, these General Conditions of Purchase, any other document (or part document) referred to on the Purchase Order. The Contract shall not include any of the Seller's conditions of sale, notwithstanding reference to them in any document. However, should this Contract be held by a court of competent jurisdiction to include the Seller's terms and conditions of sale then in the event of any conflict or apparent conflict these General Conditions of Purchase shall always prevail over the Seller's terms and conditions of sale. Delivery of Goods in response to a Purchase Order or Order Amendment shall be taken to imply that the Seller has accepted the terms and conditions of this Contract.

**3. Price:** The Seller will sell the Buyer the Goods for the firm and fixed Price stated in the Contract. If no Price is stated in the Contract then the Price shall be a fair price, taking into account prevailing market conditions. The Price shall include storage, packing, insurance, delivery, installation and commissioning (as applicable) but shall exclude VAT.

**4. Variations:** The Buyer shall have the right, before delivery, to send the Seller an Order Amendment adding to, deleting or modifying the Goods. If the Order Amendment will cause a change to the Price or delivery date then the Seller must suspend performance of the Contract and notify the Buyer without delay, calculating the new Price and delivery date at the same level of cost and profitability as the original Price. The Seller must allow the Buyer at least 10 working days to consider any new Price and delivery date. The Order Amendment shall take effect when but only if the Buyer's Authorised Officer accepts in writing the new Price and delivery date within the time the Seller stipulates. If the Buyer's Authorised Officer fails to confirm the Order Amendment within the time the Seller stipulates then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that the Buyer may still exercise the Buyer's right of cancellation in accordance with Condition 5).

**5. The Buyer's Right of Cancellation:** In addition to the Buyer's other rights of cancellation under this Contract, the Buyer may cancel the Purchase Order and any Order Amendment thereto at any time by sending the Seller a notice of termination. The Seller will comply with any instructions that the Buyer may issue with regard to the Goods. If the Seller submits a termination claim then the Buyer will pay to the Seller the cost of any commitments, liabilities or expenditure which in the Buyer's reasonable opinion were a consequence of this Contract at the time of termination. The total of all payments made or due to the Seller under this Contract, including any termination payment, shall not exceed the Price. If the Seller fails to submit a termination claim within 3 months of the date of the Buyer's notice of termination then the Buyer shall have no further liability under the Contract.

**6. Quality and Description:** \_\_a) The Goods shall: \_\_ (i) conform in every respect with the provisions of the Contract; \_\_ (ii) be capable of all standards of performance specified in the Contract; \_\_ (iii) be fit for any purpose made known to the Seller expressly or by implication and in this respect the Buyer shall rely on the Seller's skill and judgment; \_\_ (iv) be new (unless otherwise specified on the Purchase Order) and be of sound materials and skilled and careful workmanship; \_\_ (v) correspond with their description or any samples, patterns, drawings, plans and specifications referred to in the Contract; \_\_ (vi) be of satisfactory quality; \_\_ (vii) comply with any current legislation. \_\_b) Unless specifically required under the Contract, there shall be no asbestos content in the Goods.

**7. Work on the Buyer's Premises:** If the Contract involves any works or services which the Seller performs on the Buyer's premises then the following conditions shall apply:

- The Seller shall ensure that the Seller and the Seller's employees, the Seller's sub-contractors and their employees and any other person associated with the Seller will adhere in every respect to the obligations imposed on the Seller by current safety legislation.
- The Seller shall ensure that the Seller and the Seller's employees, the Seller's sub-contractors and their employees and any other person associated with the Seller will comply with any regulations that the Buyer may notify to the Seller in writing.

### 8. Progress and Inspection

- The Seller shall at the Seller's expense provide any programmes of manufacture and delivery that the Buyer may reasonably require. The Seller shall notify the Buyer without delay in writing if the Seller's progress falls behind or may fall behind any of these programmes.
- The Buyer shall have the right to check progress at the Seller's works or the works of sub-contractors at all reasonable times, to inspect and to reject Goods that do not comply with the Contract. The Seller's sub-contracts shall reserve such right for the

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- Buyer.
- c) Any inspection, or approval shall not relieve the Seller from the Seller's obligations under this Contract.
- 9. Package:** Unless otherwise stated in the Contract, all Package shall be non-returnable. If the Contract states that Package is returnable, the Seller must give the Buyer full disposal instructions before the time of delivery. The Package must be clearly marked to show to whom it belongs. The Seller must pay the cost of all carriage and handling for the return of Package. The Buyer shall not be liable for any Package lost or damaged in transit.
- 10. Safety:** The Seller shall observe all legal requirements of the United Kingdom, European Union and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food.
- 11. Delivery**
- a) The Goods shall be properly packed, secured and despatched at the Seller's expense to arrive in good condition at the time or times and the place or places specified in the Contract
- b) If the Seller or the Seller's carrier delivers any Goods at the wrong time or to the wrong place then the Buyer may deduct from the Price any resulting costs of storage or transport.
- 12. Late Delivery:** If the Goods or any part of them are not delivered by the time or times specified in the Contract then the Buyer may by written notice cancel any undelivered balance of the Goods. The Buyer may also return for full credit and at the Seller's expense any Goods that in the Buyer's opinion cannot be utilised owing to this cancellation. In the case of services, the Buyer may have the work performed by alternative means and any additional costs reasonably so incurred shall be at the Seller's expense. This shall not affect any other rights that the Buyer may have.
- 13. Property and Risk**
- a) The Seller shall bear all risks of loss or damage to the Goods until they have been delivered and shall insure accordingly.
- b) Ownership of the Goods shall pass to the Buyer: (i) when the Goods have been delivered but without prejudice to the Buyer's right of rejection under this Contract, and (ii) if the Buyer make any advance or stage payment, at the time such payment is made, in which case the Seller must as soon as possible mark the Goods as the Buyer's property.
- 14. Acceptance:** The Buyer shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of this Contract. It is agreed that the Buyer may exercise the right of rejection notwithstanding any provision contained in section 11 or section 15A or section 30 (subsections 2A and 2B) or section 35 of the Sale of Goods Act 1979. The Buyer shall give the Seller a reasonable opportunity to replace the Goods with new Goods that conform with this Contract, after which time the Buyer shall be entitled to cancel the Purchase Order and purchase the nearest equivalent goods elsewhere. In the event of cancellation under this condition the Seller shall promptly repay any moneys paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order under this condition shall not affect any other rights the Buyer may have. The Seller must collect all rejected Goods within a reasonable time of rejection or the Buyer shall return them to the Seller at the Seller's risk and expense.
- 15. Payment:** Unless stated otherwise in the Contract the Buyer shall pay the Seller within thirty (30) days of receipt of a correctly rendered invoice. The Seller's invoice must be addressed to "The Finance Department" as indicated on the Purchase Order and must quote the full Purchase Order number. The Buyer shall not be held responsible for delays in payment caused by the Seller's failure to comply with the Buyer's invoicing instructions.
- 16. The Seller's Warranty:** It is expressly agreed between us that:
- a) The Seller shall promptly make good at the Seller's expense any defect in the Goods that the Buyer discover under proper usage during the first of 12 months of actual use or 18 months from the date of acceptance by the Buyer whichever period shall expire first. Such defects may arise from the Seller's faulty design the Seller's erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of the Seller's obligations whether in this Contract or at law.
- b) Repairs or replacements will themselves be covered by the above warranty but for a period of 12 months from acceptance by the Buyer.
- c) The Seller will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least 10 years from the date of delivery of the Goods.
- 17. Indemnity and Insurance**
- a) The Seller shall indemnify the Buyer against all loss, actions, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Buyer may incur either at common law or by statute in respect of personal injury to or death of any person or in respect of any loss or destruction of or damage to property (other than as a result of any default or neglect of the Buyer or of any person for whom the Buyer is responsible) which shall have occurred in connection with any work executed by the Seller under this Contract or shall be alleged to be attributable to some defect in the Goods.

- b) This Purchase Order is given on the condition that (without prejudice to the generality of Condition 17(a)) the Seller will indemnify the Buyer against all loss, costs, claims, demands, expenses and liabilities whatsoever (if any) which the Buyer may incur either at common law or by statute (other than as a result of any default or neglect of the Buyer or of any person for whom the Buyer is responsible) in respect of personal injury to or death of any of the Seller's or the Buyer's employees, agents, sub-contractors or other representatives while on the Buyer's premises whether or not such persons are (at the time such personal injury or deaths are caused) acting in the course of their employment.
- c) The Seller will indemnify the Buyer against any and all loss, costs, expenses and liabilities caused to the Buyer whether directly or as a result of the action, claim or demand of any third party by reason of any breach by the Seller of these conditions or of any terms or obligations on the Seller's part implied by the Sale of Goods Act 1979, by the Supply of Goods and Services Act 1982 or by any other statute or statutory provision relevant to the Contract or to Goods or work covered thereby. This indemnity shall not be prejudiced or waived by any exercise of the Buyer's rights under Condition 14.
- d) The Seller shall hold satisfactory insurance cover with a reputable insurer to fulfil the Seller's insurance obligations for the duration of this Contract including public liability insurance cover of at least £2M (two million pounds Sterling). The Seller shall effect insurance against all those risks arising from the Seller's indemnity in Condition 17(c). Satisfactory evidence of such insurance and payment of current premiums shall be shown to the Buyer upon request.

**18. Recovery of Sums Due:** Whenever under the Contract any sums of money shall be recoverable from or payable by the Seller, they may be deducted from any sums then due, or which at any later time may become due to the Seller under this Contract or under any other contract the Seller may have with the Buyer.

**19. Matters beyond Control:** If either party is delayed or prevented from performing its obligations under this Contract by circumstances beyond the reasonable control of either party, (including without limitation any form of Government intervention, strikes and lock-outs relevant to the Purchase Order or breakdown of plant) such performance shall be suspended, and if it cannot be completed within a reasonable time after the due date as specified in the Purchase Order then the Contract may be cancelled by either party. The Buyer shall pay to the Seller such sum as may be fair and reasonable in all the circumstances of the case in respect of work performed by the Seller under the Purchase Order prior to cancellation but only in respect of work for which the Buyer has received full benefit as originally contemplated in the Contract. This provision can only have effect if it is called into operation by the party wishing to rely on it giving written notice to the other to that effect.

**20. Articles on Loan and the Use of Information**

- a) All tools, materials, drawings, specifications and other equipment and data ("the Articles") loaned by the Buyer to the Seller in connection with the Contract shall remain always the Buyer's property and be surrendered to the Buyer upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Seller solely for the purpose of completing the Contract. The Seller agrees that no copy of any of the articles will be made without the consent in writing of the Buyer's Authorised Officer. Until the Seller returns all the articles to the Buyer they shall be at the Seller's risk and insured by the Seller at the Seller's own expense against the risk of loss, theft or damage. Any loss of or damage to such articles shall be made good by the Seller at the Seller's expense. All scrap arising from the supply of such articles must be disposed of at the Buyer's discretion and all proceeds of sales of such scrap must promptly be paid to the Buyer in full.
- b) Any information derived from the Buyer's property or otherwise communicated to the Seller in connection with the Contract shall be kept secret and confidential and shall not without the consent in writing of the Buyer's Authorised Officer, be published or disclosed to any third party, or made use of by the Seller except for the purpose of implementing the Contract.

**21. Ownership of Results:** If the Contract involves design and/or development work:

- a) All rights in the results of work arising out of or deriving from this Contract, including inventions, designs, copyright and knowledge shall be the Buyer's property and the Buyer shall have the sole right to determine whether any letters patent, registered design, trademark and other protection shall be sought.
- b) The Seller shall promptly communicate to the Buyer all such results and shall if requested and at the Buyer's expense do all acts and things necessary to enable the Buyer or the Buyer's nominee to obtain letters patent, registered designs and other protection for such results in all territories and to assign the same to the Buyer or the Buyer's nominee.
- c) The Seller shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.

**22. Infringement of Patents:** With the exception of Goods made to the Buyer's design or instructions, the Seller warrants that neither the Goods nor the Buyer's use of them will infringe any patent registered design trade mark copyright or other protected right and undertake to indemnify the Buyer against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any such right.

**23. Non-Observance of Conditions:** If the Seller breaches or fails to observe any provision of this Contract the Buyer may give the Seller written notice of such breach or non-observance and the Seller shall have 28 days from receipt of the notice in which to rectify the breach or non-observance. Should the Seller fail to rectify the breach or non-observance, then the Buyer shall have the right to give the Seller written notice terminating the Contract with immediate effect.

**24. The Seller's Insolvency:** If the Seller becomes insolvent or bankrupt or (being a company) makes an arrangement with the Seller's creditors or has an administrative receiver or administrator appointed or commences to be wound up (other than for the purposes of amalgamation or reconstruction) the Buyer may without replacing or reducing any other of the Buyer's rights terminate the Contract with immediate effect by written notice to the Seller or any person in whom the Contract may have become vested.



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- 25. Assignment and Sub-letting:** The Contract shall not be assigned by the Seller nor sub-let as a whole. The Seller shall not sub-let any part of the Contract without the Buyer's written consent, but the Buyer shall not refuse such consent unreasonably. The restriction contained in this condition shall not apply to sub-contracts for materials for minor details or for any part of which the makers are named in the Contract. the Seller shall be responsible for all work done and Goods supplied by all sub-contractors.
- 26. Corrupt Gifts:** In connection with this or any other Contract between the Seller and the Buyer the Seller shall not give, provide, or offer to the Buyer's staff and agents any loan, fee, reward, gift or any emolument or advantage whatsoever. In the event of any breach of this Condition, the Buyer shall, without prejudice to any other rights the Buyer may possess, be at liberty forthwith to terminate this and any other Contract and to recover from the Seller any loss or damage resulting from such termination.
- 27. Waiver:** A failure at any time to enforce any provision of the Contract shall in no way affect the right at a later date to require complete performance of the Contract; nor shall the waiver of the breach of any provision be taken or held to be a waiver of any subsequent breach of the provision or be a waiver of the provision itself.
- 28. Notice:** All notices and communications required to be sent by the Seller or the Buyer in this Contract shall be made in writing and sent by first class mail and if sent to the Seller sent to the Seller's registered or head office and if sent to the Buyer sent to the address listed on the order.
- 29. Date Sensitive Electronic Components or Programmes:** If the Goods and Services contain or depend upon a microprocessor/ programmable electronic components, they must be packed in such a way to protect the goods from external corruption.
- 30. Amendment:** No addition alteration or substitution of these conditions will bind the Buyer or form part of the Contract unless and until accepted in writing by the Buyer's Authorised Officer.
- 31. Law:** The construction, validity, performance and execution of this Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.

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